

ADVISORY OPINION NO. 99-38

Issued On January 6, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Official** asks whether he may negotiate a lease, with purchase option, of property he has placed in a qualified blind trust approved by the Ethics Commission.

FACTS RELIED UPON BY THE COMMISSION

The Official and his wife own an office building which is leased to his former business partners. Because the lessees are State vendors who contract with the Official's agency, he has placed ownership of the leased premises in a Blind Trust and has recused himself from dealing with their contractual relationships with his agency.

An agent of a county Board of Education has contacted the Official with a proposal that the Board lease the property, subject to existing leases, with an option to purchase. The Board of Education property surrounds the Official's property on three sides - the fourth side is bounded by a public street - and the Board is a logical purchaser of the property.

The Official is interested in considering the proposal, particularly because it would effectively remove him from any financial connection with his former business partners. He asks if he may, consistent with the requirements of the Ethics Act, negotiate with the Board of Education and if a mutually acceptable agreement is reached, enter into the agreement and remove the property from the blind trust.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(d) provides in pertinent part that ... no elected or appointed official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control...

WV Code 6B-2-8 Exceptions to financial disclosure requirements and conflicts of interest provisions.

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Prior to accepting his current public position, the Official was an owner of a business which provided services to the State on a contract basis. When he accepted his current position with the State he sold his interest in the business to his former and partners and they continue to do work for the State. The business was and is conducted in a building owned by the Official and his wife, which they have leased to the new owners of the business.

The Ethics Act prohibits public servants, their spouses and businesses in which they have a substantial interest as owner or creditor from being a party to, or having a financial interest in, a public contract they have the authority to award or control. The Official's interest as lessor was sufficient to trigger this prohibition and to prevent his former business from continuing to work for the agency, even if he were totally isolated from the agency's contracts with that business.

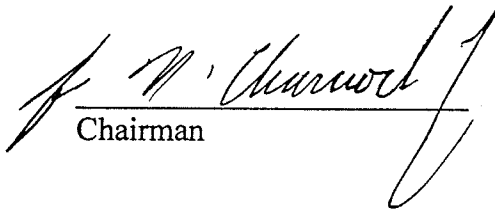
The Legislature apparently felt the prohibition could result in unwarranted hardships in some instances and, in 6B-2-8, provided that public servants could avoid the prohibition by placing their assets in a blind trust. However, even with their business interests in a blind trust, public servants must be recused from action on their agency's contracts involving those businesses.

The Official has placed ownership of the office building in a properly qualified blind trust and has recused himself from action on contracts involving his former business - he has complied with the rules the Ethics Act established to avoid conflicts of interest. As a result, his former business associates are not denied the opportunity to vie for State work, simply because they lease office space from the Official.

Now the possibility of leasing the property to the Board of Education affords him both an attractive business opportunity and a way to further distance himself from his former business. If he can divest himself of his interest in the lease with his former business partners, by substituting another governmental entity as his lessee, he will remove any potential for conflict of interest in his agency's contracts. Shifting his contractual relationship to the Board of Education cures the problem the blind trust was established to control.

Because 6B-2-8 expressly says that the beneficiary of a qualified blind trust [the Official in this instance] may not communicate with the Trustee about the disposition of trust assets, the Official may not work through the Trustee to negotiate an agreement with the Board of Education. However, there is no express prohibition against the beneficiary considering a third party's proposed lease or purchase of trust assets.

The Commission believes that an agreement between the Official and the Board of Education is entirely consistent with the goal of the blind trust mechanism. There is no compromise of any public interest and the Official is not denied a business opportunity simply because he has accepted government service. Therefore, and in this specific case only, the Commission finds that it would not be a violation of the Ethics Act for the Official to negotiate with the Board of Education for the lease/ sale of the property while it is in the Blind Trust or to enter into such an agreement conditioned upon revoking the Trust.


Chairman